IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6253 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBICA INDUSTRIES

Versus

PATEL KANUBHAI ISHWARLAL CO.

Appearance:

MR YOGESH S LAKHANI for the Petitioner.

MR BG JANI for Respondent Nos. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/08/2004

ORAL JUDGEMENT

Rule. Mr.B.G. Jani, learned Advocate, waives service of rule on behalf of the respondents.

With the consent of the parties, the matter is taken up for final hearing.

The petitioner is the original plaintiff of Summary Suit No.2185 of 2002. In the said suit, the plaintiff has claimed a money decree to the tune of Rs.15,25,221/-. In the said suit, the defendants applied for unconditional leave.

The suit was resisted on the ground of territorial jurisdiction as well as on other grounds.

At the time when the matter was heard for summons for judgment, on behalf of the plaintiff, none appeared. The trial court, thereafter, after hearing the arguments of the Advocate for the defendants, granted unconditional leave to the defendants, to defend the suit. The trial court was of the opinion that the question regarding territorial jurisdiction is required to be considered and, therefore, there is a triable issue. It is this order, by which the defendants have been given unconditional leave to defend the suit to the original defendants, which is impugned by the original plaintiff by filing this Special Civil Application.

The learned Advocate for the petitioner submitted that, on the relevant day, the concerned Advocate could not remain present, because, he was required to rush to the hospital to attend to his ailing relative. In my view, the plaintiff should have moved the learned trial Judge in this behalf for reviewing the order in question. In any case, now, since the suit is pending, Mr.B.G. Jani, learned Advocate for the respondents, fairly submitted that, in view of the alleged ground of sickness of the relative of the concerned Advocate, he has no objection if the trial court is directed to hear both the sides again and pass appropriate order in accordance with law.

In the above view of the matter, without going into the merits of the ground given by the learned Advocate for the petitioner herein, the order in question, by which unconditional leave to defend is granted to the defendants, is set aside in view of the fact that the order in question is ex parte and the Advocate of the plaintiff could not remain present. The learned trial Judge may now decide the said application for leave to defend afresh on its own merits and may pass appropriate order in accordance with law.

It is clarified that, on merits, this Court has not examined the issue at all and it is for the trial court to decide the said application afresh. The matter

is sent back only in view of the fact that the plaintiff was not present on the relevant day and that the order in question is ex parte. The trial court may dispose of the said application again, within a period of one month. Since for no fault on the part of the defendants, they are required to approach this Court, the petitioner-original plaintiff is directed to pay costs of Rs.2,000/- to the defendants. Such costs to be deposited in the trial court within a period of one month from today and on such deposit, the defendants are entitled to withdraw the said amount.

The Special Civil Application is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly.

The petitioner-original plaintiff is directed to pay the costs, as quantified above.

Writ to be sent to the trial court forthwith.

(P.B. Majmudar, J.)

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(apj)